

SECRET



STATUE OF CAPTIVITY

by István ADORJÁN

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*Demand the human right for state founding!
Otherwise, states can neglect human rights.*

Statue of Captivity

by István ADORJÁN

In this article, I concisely present and criticize, mainly from the point of view of asylum-seekers, the present legal attitude towards asylum-seekers of some overseas states founded by asylum-seekers.

“Friday, 12 October [1492] ... As they touched land, all of them kneeled down, and amidst tears of joy kissed the ground repeatedly. ... Rising, the admiral enounced that he named the island from San Salvador, the Saint Savior. ... There were present many Indians as well. They were experienced by them for meek and mild humans of good will ...” [1]

So, Christopher Columbus had had no previous permission of the Indians to travel to and enter the waters and land of the island of San Salvador. And yet, he and his crew were hospitably welcomed by the natives.

There was no state between them. There was no law that could have made them unlawful on that land. There were only the spontaneous customs of that natural people. But those were not to cause any-one of them to be taken captive.

The attitude towards Europeans of the native people in San Salvador was not general. During the discovery of new lands over the seas, there emerged conflicts and hostilities. But those were not to cause holding up the colonization.

The founded colonies further attracted people seeking asylum or a better life. The overseas lands became lands of relative liberty and hope.

But the colonies, as forms of state, created a category of people who in their migration overseas were not freely voyaging, but forcibly carried, not towards liberty and hope, but towards captivity and despondency: the slaves.

There was a Statue of Captivity, a slave-holder standing on the pedestal on the seacoast, and announcing the approaching captivity and despondency. It was an invisible spirituality, hidden in the souls as ominous presentiments and experiences of thousands of humans who were not granted the historical ability and opportunity to record and distribute their thoughts and to assert their political will, hidden in the minds of slave-holders and their political puppets as the will of capturing, bearing off and employing humans as slaves.

Of course, they were not put to make the Statue of Captivity visible in building materials. That construction would not have been fit for serving the glory of the slave-holders and their states for eternal times, as the pyramids have done with the pharaohs and Egypt.

There was conceived and built the Statue of Liberty only after and as a result of abolishing the slavery. That also bears a particular mentality of not punishing crimes, but awarding the abolishment of a criminal regime. It was like nowadays not punishing belligerents for unleashing and waging wars, but awarding them with Nobel prize for making peace.

The Statue of Liberty could have been conceived and built at any time after 1492. As it not only propagates the spirituality and serves the glory of the abolitionists, but also announces sea-travelers from afar that they have succeeded in crossing the Atlantic Ocean, and are approaching a land of relative liberty and prosperity.

Nowadays, most people enter the overseas lands by air. For this reason, the unusual height and the raised arm of the Statue of Liberty may have little importance for them. However, there are still people traveling by sea. And they are not only the crews of cargo-vessels and tankers, but also the humans dis-

paragingly referred to in the legislation of overseas states as “stowaways.”

Regularly, “stowaways” are humans in need of asylum or a better life, just as the former colonists. They are among the people who have no chance for legally entering the lands of relative liberty and prosperity, as asylum-seeking or just wanting to try luck are reasons for rejecting temporary visa applications. For this reason, the Statue of Liberty may appear in their eyes as being rather stagy and hypocritical.

There is a Statue of Captivity, a policeman standing on the pedestal on the seacoast, and announcing the approaching captivity of persons with the legal status of “stowaway.” It is an invisible spirituality, hidden in the souls as ominous presentiments and experiences of thousands of humans who were not granted the historical ability and opportunity to assert their political will, hidden in the minds of some rich men not interested in higher taxes, not wanting to support asylum-seekers and other kinds of destitute people, and their political puppets as the will of taking into custody, and deporting humans not looking like being economically profitable, and expected to be a burden to the budget.

Regularly, detention for “stowaways” is not a punishment, but a procedural means applied till admittance into the asylum system, turnaround, removal or deportation. However, their carriers may be punished with imprisonment. For this reason, the message of the invisible statue policeman has been meant also for the shipmasters, who have chosen or might chose to help the humans longing for asylum or a better life.

Section 235 of the Immigration and Nationality Act of the United States comprises a subsection exclusively destined for “stowaways. - An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. Upon such inspection if the alien indicates an intention to apply for asylum or a fear of persecution, the officer shall refer the alien for an interview. A stowaway may apply for asylum only if the stowaway is found to have a credible fear of persecution. In no case may a stowaway be considered an applicant for admission.”

As regards carriers, section 273 provides that “it shall be unlawful for any person, including any transportation company, or the owner, master, commanding officer, agent, charterer, or consignee of any vessel or aircraft, to bring to the United States from any place outside thereof (other than from foreign contiguous territory) any alien who does not have a valid passport and an unexpired visa, if a visa was required under this Act or regulations issued thereunder.

It is unlawful for an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft who is bringing an alien (except an alien crewmember) to the United States to take any consideration to be kept or returned contingent on whether an alien is admitted to, or ordered removed from, the United States.

If it appears to the satisfaction of the Attorney General that any alien has been so brought, such person, or transportation company, or the master, commanding officer, agent, owner, charterer, or consignee of any such vessel or aircraft, shall pay to the Commissioner a fine of \$3,000 for each alien so brought and, except in the case of any such alien who is admitted, or permitted to land temporarily, in addition, an amount equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, such latter fine to be delivered by the Commissioner to the alien on whose account the assessment is made.”

It seems to me that the above three subsections can only be applied to US natural and artificial persons. Otherwise, they would be extra-territorial. Namely, non-US persons cannot be obliged by US law to check the traveling documentation of passengers outside the territory of the United States. They have to do it only after entering the US territorial waters. But then, these provisions would be superfluous, as they will have to anyway carry the passengers without the legally required documents as far as the port

of entry.

I also question the legality of delegating state powers to non-state persons. Illegal seems to me also the state interference in such transportation matters that should concern only the carrier and the passenger. The carrier should be sovereign in deciding on whom and in what conditions it takes. The above law seems to arrogate even the capacity to interdict the elementary natural right of the carrier to compassionately inquire after the situation of the human praying for boarding.

The Canadian Immigration and Refugee Protection Act current to 27 April 2015 does not contain the term “stowaway.” That is consistent with the facts that Canada accepts the greatest number of refugees, and has the most friendly policy towards asylum seekers.

However, there are severe punishments for “human smuggling and trafficking.” Section 117: “(1) No person shall organize, induce, aid or abet the coming into Canada of one or more persons knowing that, or being reckless as to whether, their coming into Canada is or would be in contravention of this Act.

(2) A person who contravenes subsection (1) with respect to fewer than 10 persons is guilty of an offence and liable (a) on conviction on indictment (i) for a first offence, to a fine of not more than \$500,000 or to a term of imprisonment of not more than 10 years, or to both, or (ii) for a subsequent offence, to a fine of not more than \$1,000,000 or to a term of imprisonment of not more than 14 years, or to both; and (b) on summary conviction, to a fine of not more than \$100,000 or to a term of imprisonment of not more than two years, or to both.

(3) A person who contravenes subsection (1) with respect to a group of 10 persons or more is guilty of an offence and liable on conviction by way of indictment to a fine of not more than \$1,000,000 or to life imprisonment, or to both.”

From 1492, shipmasters were allowed not only to “smuggle and traffic” people overseas unpunished, but also to charge a fee for their service. Today, the situation is different from this point of view as well, according to the same section 117 of the above law, passed by descendants of humans “smuggled and trafficked” to Canada. “(3.1) A person who is convicted on indictment of an offence under subsection (2) or (3) with respect to fewer than 50 persons is also liable to a minimum punishment of imprisonment for a term of three years, if the commission of the offence was for profit.

(3.2) A person who is convicted of an offence under subsection (3) with respect to a group of 50 persons or more is also liable to a minimum punishment of imprisonment for a term of five years, if the commission of the offence was for profit.”

The Australian Migration Act 1958 compiled on 18 April 2015 provides in section 228B: “(1) a non-citizen has, at a particular time, no lawful right to come to Australia if, at that time the non-citizen does not hold a visa that is in effect. (2) To avoid doubt, a reference in subsection (1) to a non-citizen includes a reference to a non-citizen seeking asylum, whether or not Australia has, or may have, protection obligations in respect of the non-citizen because the non-citizen is or may be a refugee.” I strongly doubt there having ever been a single person being granted a temporary visa on the ground of his or her traveling to Australia for submitting an asylum application there. I think, the introduction of subsection (2) was induced by the political will of not granting legal status to asylum-seekers, of considering them “unlawful non-citizens.”

Humans seeking asylum or a better life arriving in Australia by sea are legally termed “unauthorised maritime arrivals.” Section 5AA : “(1) a person is an unauthorised maritime arrival if (a) the person entered Australia by sea at any place at any time and (b) the person became an unlawful non-citizen because of that entry.” Section 14: “A non-citizen who is not a lawful non-citizen is an unlawful non-citizen.” That seems to be a particular and interesting manner to say that “unauthorised maritime arrivals” are the humans who arrived in Australia by sea without a valid visa.

In order to exclude among others the possibility of the “boat people” to apply for asylum in Australia, section 46A provides that “(1) an application for a visa is not a valid application if it is made by an unauthorised maritime arrival who: (a) is in Australia; and (b) is an unlawful non-citizen.”

And with these provisions, Australia has made itself probably the only country over the seas in which the humans arrived by sea without a valid visa may not ask for asylum. Instead, section 189 enacts the detention of those asylum-seekers: “(1) If an officer knows or reasonably suspects that a person is an unlawful non-citizen, the officer must detain the person.”

Section 210: “a non-citizen who is removed or deported is liable to pay the Commonwealth the costs of his or her removal or deportation.” Section 215: “costs payable by a person to the Commonwealth may be recovered by the Commonwealth as a debt due to the Commonwealth in a court of competent jurisdiction.” It is worth remarking the sharp contrast between the mercy of the shipmasters carrying hopeful “stowaways” for nothing, and the mercilessness of the state having hopeless humans transported at prices regularly affordable only by overseas citizens.

In those financial matters, there may be involved the respective shipmasters as well. Section 217: “(1) If a person is to be removed, the Secretary may give the controller of the vessel on which the person travelled to and entered Australia written notice requiring the controller to transport the person from Australia.” Section 218: “(1) if a person is to be removed or deported, the Secretary may give the controller of a vessel or vessels a written notice requiring the controller to transport the person from Australia to a destination of the vessel or one of the vessels specified in the notice. (2) The controller must comply with the notice within 72 hours of the giving of the notice or such further time as the Secretary allows. Penalty: 100 penalty units. (3) An offence against subsection (2) is an offence of strict liability.”

And now follows the already usual plan of penal business with asylum-seekers. Section 229: “(1) The master, owner, agent, charterer and operator of a vessel on which a non-citizen is brought into Australia on or after 1 November 1979 are each guilty of an offence against this section if the non-citizen, when entering Australia is not in possession of evidence of a visa that is in effect and that permits him or her to travel to and enter Australia. (2) A person who is guilty of an offence against this section is liable, upon conviction, to a fine not exceeding \$10,000. (3) An offence against subsection (1) is an offence of absolute liability.”

The business plan proceeds with making “negligent” shipmasters criminals. Section 230: “(1) The master, owner, agent and charterer of a vessel are each guilty of an offence against this section if an unlawful non-citizen is concealed on the vessel when it arrives in the migration zone. (1A) The master, owner, agent and charterer of a vessel are each guilty of an offence against this section if: (a) a person is concealed on the vessel when it arrives in Australia; and (b) the person would, if in the migration zone, be an unlawful non-citizen. (1B) An offence against subsection (1) or (1A) is an offence of strict liability. Penalty: \$10,000.”

Section 233A: “People smuggling. (1) A person (the first person) commits an offence if: (a) the first person organises or facilitates the bringing or coming to Australia, or the entry or proposed entry into Australia, of another person (the second person); and (b) the second person is a non-citizen; and (c) the second person had, or has, no lawful right to come to Australia. Penalty: Imprisonment for 10 years or 1,000 penalty units, or both. (2) Absolute liability applies to paragraph (1)(b).”

“Boat-people” business plan. Section 233C: “(1) A person (the first person) commits an offence if: (a) the first person organises or facilitates the bringing or coming to Australia, or the entry or proposed entry into Australia, of a group of at least 5 persons (the other persons); and (b) at least 5 of the other persons are non-citizens; and (c) the persons referred to in paragraph (b) who are non-citizens had, or have, no lawful right to come to Australia. Penalty: Imprisonment for 20 years or 2,000 penalty units, or both.”

And finally follows the phase of the penal business plan promising to be the most profitable: selling vessels by the state. Section 260: “(1) The Secretary may, in writing, direct an officer to detain a vessel where, in the Secretary’s opinion, the master, owner, agent or charterer of the vessel has been guilty of an offence against this Act. (4) The detention of a vessel under this section shall cease if a bond with 2 sufficient sureties to the satisfaction of the Secretary is given by the master, owner, agent or charterer of the vessel for the payment of any penalties that may be imposed in respect of the alleged offence. (5) If, while the vessel is detained under this section, default is made in payment of any penalties imposed in respect of an offence against this Act by the master, owner, agent or charterer of the vessel, the Secretary may seize the vessel, and the like proceedings shall thereupon be taken for forfeiting and condemning the vessel as in the case of a vessel seized for breach of the law relating to the Customs, and the vessel shall be sold. (6) The proceeds of the sale shall be applied firstly in payment of the penalties referred to in subsection (5) and of all costs awarded in connexion with the proceedings in which the penalties were imposed or incurred in and about the sale and the proceedings leading to the sale, and the balance shall be payable to the owner and other persons having interests in the vessel before the condemnation and sale.”

New Zealand is geographically the most solitary land of relative liberty and prosperity, it is probably the most difficult to reach for asylum-seekers. However, its immigration legislation appears to be the most extra-territorial and the most abusive in the striving of the legislators to prevent humans seeking asylum or a better life to voluntarily get through to New Zealand.

Pursuant to section 101 of the Immigration Act of 16 November 2009, “(1) the carrier, and the person in charge of any craft that is en route to New Zealand from another country have the responsibility (a) to ensure that all persons boarding the craft have the prescribed documentation for immigration purposes.”

Section 96: “(2) The carrier or the person in charge of a commercial craft must, before the craft departs from another country to travel to New Zealand, (a) obtain from every person who intends to board the craft for the purpose of travelling to New Zealand the information prescribed; (b) provide to the chief executive, by means of an approved system, the information prescribed.”

Section 97: “(1) The chief executive may decide that a person in relation to whom information has been received under section 96 may board a craft for the purpose of travelling to New Zealand, or may not board a craft for the purpose of travelling to New Zealand, or may board a craft for the purpose of travelling to New Zealand only if he or she complies with conditions specified by the chief executive. (4) A person in relation to whom a decision is made under subsection (1) may not appeal the decision to any court, the Tribunal, the Minister, or otherwise. (5) The chief executive is not obliged to give reasons for a decision made under subsection (1).” So, the extra-territorial and abusive discretion is absolute, and bears the appearance of individuality.

Section 14 provides that “a person who is not a New Zealand citizen may travel to New Zealand only if the person is the holder of a visa granted under this Act, or is a person to whom a visa waiver applies.” As humans just dreaming of asylum or a better life cannot regularly be expected to be granted a visa or a visa waiver, one of their alternative is to board a ship by winning the compassion or avoiding the vigilance of the shipmaster.

In section 4, the Immigration Act defines the concept of “stowaway as being a person who is carried in or on a craft without the consent of the carrier, or the person in charge, of the craft.” This concept and definition are linguistically correct though, but their introduction seems to me relatively euphemistic and hypocritical, as legally relevant is not the consent of the carrier, but the not holding of a visa of the “stowaway.” And who are then the persons traveling on the basis of the compassion of shipmasters?

This law makes no status distinction between an asylum-seeker arrived in New Zealand by sea

without a visa who did not have, and an asylum-seeker who had the consent of the shipmaster. This suggests that in practice, because of the penalties provided in this law, the compassionate shipmasters helping asylum-seekers pretend not to have been aware of their presence on board. Of course, the definition “stowaway means a person who is carried in or on a craft without a visa” — which I think reflects the real will of the legislator, and would be more suitable for this law — would have been linguistically incorrect, and would have implied a kind of allusion to the morally and internationally legally unsustainable character of this law.

However, “stowaways” will get “asylum or a better life” in a station-house, at least in the first days. Section 115: “Arrest and detention of persons . This section applies to any person arriving in New Zealand from another country who (b) is not a person to whom a visa waiver applies and is not the holder of a visa granted under this Act; or (d) is a stowaway.”

The unsuitable character of the concept of “stowaway” is indicated by the theoretical possibility that if a “stowaway” happens to have a “visa granted under this Act,” or to be a New Zealand citizen, he or she shall by virtue of this law be arrested and detained, because he or she traveled “without the consent of the carrier,” even if the carrier indulged that.

And now follows the provisions limiting the capacity of “stowaways” to apply for asylum. Section 9: “(1) a person who is not a New Zealand citizen is unlawfully in New Zealand if the person is in New Zealand but is not the holder of a visa granted under this Act.” Section 20: “No person who is unlawfully in New Zealand may apply for a visa and, where any such person purports to apply for a visa, it is a matter for the absolute discretion of the Minister.” Section 18: “A person who is unlawfully in New Zealand has an obligation to leave New Zealand.”

The following provisions cannot be deemed to better the lives of humans who have come to New Zealand in the hope of attaining a better life. Section 398” “(4) The following costs incurred by the Crown in deporting or repatriating a person are recoverable as a debt due to the Crown: (a) the actual or estimated costs incurred in deporting the person that a deportation order specifies as requiring to be repaid; the actual costs incurred in repatriating a person; any sum fixed by a court on application under subsection (5). (5) The Minister or an immigration officer may, at any time before a person is deported or repatriated from New Zealand, apply to a court of competent jurisdiction to fix a sum that in the opinion of the court represents any reasonable costs incurred or likely to be incurred by the Crown in deporting or repatriating the person, and the sum is recoverable as a debt due to the Crown by the person. (6) For the purposes of this section, the costs incurred or likely to be incurred in deporting or repatriating a person include the following costs pending the person’s deportation or repatriation from New Zealand: (a) the costs of locating, detaining, and maintaining the person; and (b) travel costs for the person. (7) Any costs recovered under this section must be paid into a Crown Bank Account.”

Further, the law provides tools for financially measuring the compassion or determination to help of shipmasters. Section 349: “(1) Every carrier, or person in charge, of a commercial craft commits an offence who (a) fails without reasonable excuse to comply with any of the carrier’s or the person’s responsibilities under section 96 subsection (2); or (b) allows a person to travel to New Zealand before a decision has been made by the chief executive under section 97 subsection (1); (2) Every carrier, or person in charge, of a craft commits an offence who fails without reasonable excuse to comply with the requirement of section 101 subsection (1)(a).”

Section 356: “(1) A person convicted of an offence against section 349 is liable (a) in the case of a carrier of a craft, to imprisonment for a term not exceeding 3 months, a fine not exceeding \$50,000, or both; (b) in the case of a person in charge of a craft, to imprisonment for a term not exceeding 3 months, a fine not exceeding \$25,000, or both.”

Section 359: “In this Act, infringement offence means an offence against section 349 subsection (1) or section 349 subsection (2)(a).” Section 364: “(1) Infringement fees prescribed under this Act may

not exceed (a) in the case of a person in charge of a craft, \$2,500; and (b) in the case of a carrier of a craft, \$5,000.”

Earlier, all immigrants overseas were “boat people.” They could see from afar the torch of the Statue of Liberty announcing the approaching state of liberty. Today, all “boat people” face captivity, they experience the Statue of Captivity. The number of humans in “immigration detention” is relatively small. Besides them, there are the “plane people” immigrating imbued with the spirituality of liberty. Their number is also relatively small. The Statue of Liberty also announces the extant liberty of the settled. And their number amounts to hundreds of millions. The Statue of Captivity is almost imperceivable in the shadow of the Statue of Liberty.

The imposing Statue of Liberty could not have been built without the financial and political support of two powerful states and two powerful civil societies. Perhaps, there could be found some states in the world that would finance the building of the Statue of Captivity. Its best location would probably be Christmas Island. But they would probably not get the authorization of the state authorities. Also, a tiny Statue of Captivity could somewhere be built from the financial contributions of humans seeking asylum or a better life. But that would stay practically invisible.

If the above immigration laws were strictly respected, no asylum applications would be lodged with-in the respective overseas countries. So, the political will appears to be clear: “We do not want to deal with any true asylum cases. We are only willing to through our representatives select a certain number of asylum applicants appearing to become the most beneficial to our countries.” Only that admittance through consulates can be completely discretionary, as there is no possibility to appeal a negative decision. Consequently, it seems that the above countries are normally processing asylum applications mainly from humans carried in illegally by smugglers or compassionate, determined or “negligent” shipmasters preferring morality and international legality to national legality, and from humans who succeeded in deceiving the consular authorities by being able to present apparently valid reasons for issuing a temporary visa.

European colonization, the free migration of European humans overseas, partly displaced the respective native civilizations though, but replaced them with civilizations that can be deemed superior in their vitality and attractiveness. The free immigration overseas of destitute humans from around the world would destabilize the new civilizations. There would be less prosperity and less liberty, more destitution and more captivity. The institution of “immigration detention” is already an expression of this enunciation. The native civilizations could not prevail. The destitute masses shall not prevail. The new civilizations have the means and right to protect the relative liberty and prosperity of their members.

However, they have assumed some international obligations. Article 14 of the Universal Declaration of Human Rights provides that “everyone has the right to seek and to enjoy in other countries asylum from persecution.” Consequently, when “stowaways” are not allowed to submit valid applications for asylum, there is a breach of that article. An internationally legal solution would be establishing quotas, saying: “You all have the right to seek asylum, to lodge a valid application for protection. You are not irregular or unauthorized arrivals, and unlawfully here if you are inside the yearly quota. But you have to understand that our capacities to deal with you are limited. Now, you’ll have to return. Maybe, next time you’ll have more luck.” One could understand that for relatively successful humans of relatively successful societies it is less difficult to enact their incapacities as interdictions and obligations than to say “we cannot.” But otherwise, they will have to defy on the Statue of Liberty with their invisible Statue of Captivity.

Reference

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Other Publications

Up to May 2015, I have self-published my following books and articles:

- 1) the Hungarian-language and paperback version of my book entitled “Towards the Iron Curtain of the Hungarian Communist State,” (A magyar kommunista állam vasfüggönye felé), in Romania and Hungary;
- 2) the English-language and electronic version of my book entitled “Towards the Iron Curtain of the Hungarian Communist State,” with the Internet distributor Kobo;
- 3) the English-language and electronic version of my article entitled “Romanian Budapest-Consulate Unlawfulness on 30 September 2014,” with the Internet distributors Google Play and Kobo;
- 4) the English-language and electronic version of my article entitled “Romanian Budapest-Consulate Unlawfulness on 31 October 2014,” with the Internet distributors Google Play and Kobo;
- 5) the Romanian-language and electronic version of my book entitled “Documents and Objects relative to My Fraudulent Crossings of the State Frontier of the Socialist Republic of Romania” (Înscrișuri și obiecte relativ la trecerile mele frauduloase ale frontierei de stat a Republicii Socialiste România), with the Internet distributor Google Play;
- 6) the English-language and electronic version of my book entitled “My Restrained Asylum Documents and Their Restraint,” with the Internet distributors Google Play and Internet Archive;
- 7) the English-language and electronic version of my article entitled “A Case of Securitate Dossier Burial in Romania,” with the Internet distributor Google Play;
- 8) the English-language and electronic version of my book entitled “My Arisen Essential Asylum Documents and Their Essence,” with the Internet distributors Google Play and Internet Archive.

This e-article was edited by the author personally with mainly the following technical means: Acer AOD270, Linux/GNU Mint 17, LibreOffice 4.2, GIMP 2.8.

The End of E-Article